

AMENDMENT TO H.R. 1858
OFFERED BY MR. OXLEY

Page 13, beginning on line 1, strike title II and insert the following:

1 **TITLE II—SECURITIES MARKET**
2 **INFORMATION**

3 **SEC. 201. MISAPPROPRIATION OF REAL-TIME MARKET IN-**
4 **FORMATION.**

5 Section 11A of the Securities Exchange Act of 1934
6 (15 U.S.C. 78k-1) is amended by adding at the end the
7 following new subsection:

8 “(e) MISAPPROPRIATION OF REAL-TIME MARKET IN-
9 FORMATION.—

10 “(1) PROHIBITION AGAINST MISAPPROPRIA-
11 TION.—Subject to paragraphs (3), (4), and (5), any
12 person who—

13 “(A) obtains directly or indirectly from a
14 market information processor real-time market
15 information, and

16 “(B) directly or indirectly sells, distributes
17 or redistributes, or otherwise disseminates such
18 real-time market information, without the au-
19 thorization of the market information processor,
20 shall be liable to that market information processor
21 for the remedies set forth in paragraph (2).

1 “(2) CIVIL REMEDIES.—

2 “(A) CIVIL ACTIONS.—Any person who is
3 injured by a violation of paragraph (1) may
4 bring a civil action for such a violation in an
5 appropriate United States district court, except
6 that any action against a State governmental
7 entity may be brought in any court that has ju-
8 risdiction over claims against such entity.

9 “(B) TEMPORARY AND PERMANENT IN-
10 JUNCTIONS.—Any court having jurisdiction of a
11 civil action under this subsection shall have the
12 power to grant temporary and permanent in-
13 junctions, according to the principles of equity
14 and upon such terms as the court may deem
15 reasonable, to prevent a violation of paragraph
16 (1).

17 “(C) MONETARY RELIEF.—When a viola-
18 tion of paragraph (1) has been established in
19 any civil action arising under this subsection,
20 the plaintiff shall be entitled to recover any
21 damages sustained by the plaintiff.

22 “(D) DISGORGEMENT.—When a violation
23 of paragraph (1) has been established, if the
24 plaintiff is not able to prove recoverable dam-
25 ages to the full extent of the defendant’s mone-

1 tary gain directly attributable to the violation,
2 the court, in its equitable discretion, may order
3 the defendant to disgorge the amount of such
4 monetary gain to the plaintiff.

5 “(3) PERMITTED ACTS.—

6 “(A) GATHERING OR USE OF REAL-TIME
7 MARKET INFORMATION INDEPENDENTLY OB-
8 TAINED.—Nothing in this subsection shall re-
9 strict any person from independently gathering
10 real-time market information, or from redistrib-
11 uting or disseminating such independently gath-
12 ered information.

13 “(B) NEWS REPORTING.—Nothing in this
14 subsection shall restrict any news reporting en-
15 tity from extracting real-time market informa-
16 tion for the sole purpose of news reporting, in-
17 cluding news gathering, dissemination, and
18 comment, unless the extraction is part of a con-
19 sistent pattern of competing with a market in-
20 formation processor in the distribution of real-
21 time market information.

22 “(4) RELATIONSHIP TO OTHER LAWS.—

23 “(A) PREEMPTION.—Subject to subpara-
24 graphs (B), (C), and (D), on and after the date
25 of enactment of this subsection, this section—

1 “(i) shall exclusively govern the unau-
2 thorized extraction, sale, distribution or re-
3 distribution, or other dissemination of real-
4 time market information; and

5 “(ii) shall supersede any other Fed-
6 eral or State law (either statutory or com-
7 mon law) to the extent that—

8 “(I) such other Federal or State
9 law establishes rights and remedies
10 with respect to the unauthorized ex-
11 traction, sale, distribution or redis-
12 tribution, or other dissemination of
13 market information that are different
14 from or in addition to the rights and
15 remedies established by this sub-
16 section; or

17 “(II) such other Federal or State
18 law is inconsistent with this section.

19 “(B) FEDERAL SECURITIES LAWS.—Noth-
20 ing in this subsection shall be construed—

21 “(i) to limit or otherwise affect the
22 application of any provision of the securi-
23 ties laws (as defined in section 3(a)(47)),
24 or the rules and regulations thereunder; or

1 “(ii) to impair or limit the authority
2 of the Commission.

3 “(C) ANTITRUST.—Nothing in this sub-
4 section shall limit in any way the constraints
5 that are imposed by Federal and State antitrust
6 laws on the manner in which products and serv-
7 ices may be provided to the public, including
8 those regarding single suppliers of products and
9 services.

10 “(D) LICENSING.—Nothing in this sub-
11 section shall restrict the rights of parties freely
12 to enter into licenses or any other contracts
13 with respect to the extraction, sale, distribution
14 or redistribution, or other dissemination of real-
15 time market information, and to maintain civil
16 actions under State law to enforce such licenses
17 or contracts.

18 “(5) LIMITATIONS ON ACTIONS.—

19 “(A) CIVIL ACTIONS.—No civil action shall
20 be maintained under this subsection unless it is
21 commenced within one year after the cause of
22 action arises or claim accrues.

23 “(B) ADDITIONAL LIMITATION.—No civil
24 action shall be maintained under this subsection
25 for the extraction, sale, distribution or redis-

1 tribution, or other dissemination of market in-
2 formation that is not real-time market informa-
3 tion.

4 “(C) PERSONS SUBJECT TO CONTRACTUAL
5 REMEDIES.—No civil action shall be maintained
6 under this subsection by a market information
7 processor against any person to whom such
8 processor provides real-time market information
9 pursuant to a contract or agreement between
10 such processor and such person with respect to
11 any real-time market information or any rights
12 or remedies provided pursuant to such contract
13 or agreement.

14 “(6) DEFINITIONS.—As used in this subsection:

15 “(A) MARKET INFORMATION.—The term
16 ‘market information’ means information—

17 “(i) with respect to quotations and
18 transactions in any security; and

19 “(ii) the collection, processing, dis-
20 tribution, and publication of which is sub-
21 ject to this title.

22 “(B) REAL-TIME MARKET INFORMATION.—
23 Taking into account the present state of tech-
24 nology, different types of market data, how
25 market participants use market data, and other

1 relevant factors, the Commission may, con-
2 sistent with the protection of investors and the
3 public interest and with the objectives of this
4 section, prescribe by rule the extent to which
5 market information shall be considered to be
6 real-time market information for purposes of
7 this subsection.

8 “(C) MARKET INFORMATION PROC-
9 ESSOR.—The term ‘market information proc-
10 essor’ with respect to any market information
11 means the securities exchange, self-regulatory
12 organization, securities information processor,
13 or national market system plan administrator
14 that is responsible under this title or the rules
15 or regulations thereunder, for the collection,
16 processing, distribution, and publication of, or
17 preparing for distribution or publication, such
18 market information.”.

19 **SEC. 202. EFFECTIVE DATE.**

20 (a) IN GENERAL.—The amendment made by section
21 201 shall take effect on the date of the enactment of this
22 Act, and shall apply to acts committed on or after that
23 date.

24 (b) PRIOR ACTS NOT AFFECTED.—No person shall
25 be liable under section 11A(e) of the Securities Exchange

1 Act of 1934 (15 U.S.C. 78k-1(e)), as added by section
2 201 of this Act, for the extraction, sale, distribution or
3 redistribution, or other dissemination of real-time market
4 information prior to the date of enactment of this Act,
5 by that person or by that person's predecessor in interest.